indeed, the constitution contains a special provision guaranteeing a jury trial in all prosecutions for libel.[13]

This immunity from an injunction, while applicable to libels, is not similarly applicable to other forms of injurious publications where the historical requirement of a jury trial is not so pressing. Accordingly, where the act of publication results in intimidation and coercion it is treated as an ordinary crime, and the liberty of the press does not then limit the jurisdiction of equity to protect property.[14] Furthermore, according to the prevailing view, it seems that a publication, no matter how innocent in itself, may be enjoined if it is made in pursuance of a scheme which has an enjoinable element.[15] Thus, although the courts are at variance as to whether an injunction may issue against a boycott,[16] they are agreed that wherever such is the case, publications in aid thereof, even if libels, cannot claim the protection of the guaranty.[17] In establishing this doctrine they assert that the right to engage in a lawful occupation is not less essential than that of free speech.[18] In order, therefore, to obtain the greatest possible freedom of action and speech equally for all, these conflicting constitutional rights must be exercised in accordance with the maxim, *Sic utere tuo ut alienum non laedas.*[19] Certainly, the press should not be employed unjustifiably to ruin another's occupation, and where such ruin is imminent the injunction, though a dangerous weapon, becomes a proper one.

REGULATION OF INTERNAL AFFAIRS OF FOREIGN CORPORATIONS.[1]—The principle is frequently stated that courts of equity will not take jurisdiction in suits which involve regulating the internal affairs of a foreign corporation.[2] The reasons assigned for the doctrine are the futility of rendering a decree which the court would be powerless to

[13]See N. Y. Constitution, Art. 1, § 8. But the necessity for such trial was in the nature of a protection to the individual against arbitrary rulings on the part of the judge. Hence, to-day, when the jury has decided a publication to be libelous there is no objection to enjoining its further publication if irreparable injury to a property right will ensue. See Flint *v.* Hutchinson S. B. Co., *supra;* Baltimore Life Ins. Co. *v.* Gleisner (1902) 202 Pa. 386.

[14]See Beck *v.* Teamsters' Prot. Union (1898) 118 Mich. 497, 526; Emack *v.* Kame (C. C. 1888) 34 Fed. 46; Shoemaker *v.* The South Bend S. A. Co. (1893) 135 Ind. 471; Pratt Food Co. *v.* Bird (1907) 148 Mich. 631; Thomas *v.* Cincinnati etc. Ry. (C. C. 1894) 62 Fed. 803.

[15]Amer. Federation of Labor *v.* Buck's S. & R. Co. (1909) 33 App. Cas. (D. C.) 83, 108.

[16]Rocky Mtn. Bell Tel. Co. *v.* Montana F. of L. (C. C. 1907) 156 Fed. 809. But see Lindsay & Co. *v.* Montana F. of L., *supra.*

[17]See Gompers *v.* Bucks Stove & Range Co. (1911) 221 U. S. 418.

[18]Rocky Mtn. Bell Tel. Co. *v.* Montana F. of L., *supra.*

[19]Pavesich *v.* New Eng. Life Ins. Co. (1904) 122 Ga. 190, 202, *et seq.*

[1]Whether the courts will enforce the statutory individual liability of stockholders of foreign corporations, though sometimes considered under this head, really depends upon different considerations. See 6 COLUMBIA LAW REVIEW 45.

[2]3 Cook, Corporations (7th ed.) § 734; 5 Thompson, Corporations (2nd ed.) § 6741; Madden *v.* Elec. Light Co. (1897) 181 Pa. 617, reaffirmed (1901) 199 Pa. 454.

enforce,[3] and the impropriety of deciding questions which depend upon the law and policy of another jurisdiction.[4] While the courts are practically uniform in stating the rule as above, there is no little conflict as to the details of its extent and meaning.

The question is not one of jurisdiction. Since each state has the power to exclude foreign corporations entirely from doing business within its limits,[5] it clearly has the incidental right to require as a condition precedent to the exercise of that privilege that such corporations submit to the jurisdiction of the local tribunals.[6] The real question is, therefore, whether the courts will in their discretion exercise their undisputed power over foreign corporations to regulate their internal affairs, and if not, what constitutes "internal affairs".

The test usually laid down is whether the suit is based on the right of the plaintiff as stockholder;[7] if it is, the matter is internal, and the court will decline to exercise jurisdiction. Thus it is almost universally recognized that courts will not enjoin an assessment on stockholders as illegal or fraudulent;[8] nor will they at the suit of a stockholder compel the payment of dividends, or enjoin a bond issue,[9] or otherwise supervise the proceedings of the board of directors of a corporation.[10] So although the courts have power to appoint a receiver of those corporate assets which are within the territorial jurisdiction of the courts,[11] as distinguished from a receiver of the corporation for the purpose of winding up its affairs,[12] and although they will exercise this power for the protection of the interests of creditors, they will not for the benefit of stockholders.[13] So, too, they will not dis-

[3]Jackson *v.* Hooper (1910) 76 N. J. Eq. 592; Kimball *v.* St. Louis, etc. Ry. (1892) 157 Mass. 7.

[4]New Haven, etc. Co. *v.* Linden, etc. Co. (1886) 142 Mass. 349; Moore *v.* Silver Valley, etc. Co. (1889) 104 N. C. 534, 545.

[5]Blake *v.* McClung (1898) 172 U. S. 239.

[6]8 COLUMBIA LAW REVIEW 320; 12 Harv. Law Review 1.

[7]Sprague *v.* Universal Voting Machine Co. (1907) 134 Ill. App. 379; North State, etc. Co. *v.* Field (1885) 64 Md. 151.

[8]Clark *v.* Mutual etc. Assn. (1899) 14 App. Cas. (D. C.) 154, 175; Condon *v.* Mut. Reserve Assn. (1899) 89 Md. 99; Howard *v.* Mutual etc. Assn. (1899) 125 N. C. 49; Taylor *v.* Mut. etc. Life Assn. (1899) 97 Va. 60.

[9]Kimball *v.* St. Louis, etc. Ry., *supra.*

[10]Jackson *v.* Hooper, *supra;* Madden *v.* Elec. Light Co., *supra.* The exceptionally broad New York rule, which permits the court to interfere in such cases, Prouty *v.* Michigan, etc. Ry. (N. Y. 1874) 1 Hun 655; Kraft *v.* Griffon Co. (N. Y. 1903) 82 App. Div. 29; see Jacobs *v.* Mexican, etc. Co. (N. Y. 1904) 44 Misc. 409, is based upon the interpretation of § 1780 of the Code of Civil Procedure, and is therefore not really material to the present discussion. Since, however, the question is one not of power but of discretion, it would seem that the statute does not justify this interpretation. In the somewhat analogous case of torts committed without the State, the courts may in their discretion refuse to take jurisdiction. See Burdick *v.* Freeman (1890) 120 N. Y. 420.

[11]See Woerishoffer *v.* North River Co. (1885) 99 N.Y, 398.

[12]See Note 14.

[13]Bradbury *v.* Waukegan etc. Co. (1904) 113 Ill. App. 600; McCloskey *v.* Snowdon (1905) 212 Pa. 249; Sidway *v.* Mo. Land etc. Co. (C. C. 1900) 101 Fed. 481; *contra,* Culver Lumber etc. Co. *v.* Culver (1906) 81 Ark. 102; by statute, Albert *v.* Clarendon etc. Co. (1891) 53 N. J. Eq. 623, see Fawcett *v.* Iron Hall (1894) 64 Conn. 170; Security etc. Assn. *v.* Moore

solve foreign corporations,[14] though they may if the statutes warrant it, order that the privilege of doing business within the state be forfeited.[15] And most jurisdictions will not determine which of two rival claimants is really an officer or stockholder of the corporation.[16]

On the other hand it is held that mandamus will lie to enforce a stockholder's right to inspect the corporate books, provided the books are within the jurisdiction.[17] In such a case the difficulty of enforcement does not exist; but the plaintiff is unquestionably seeking relief in the capacity of a stockholder, so the general test is inapplicable.

An interesting question arises where a stockholder sues to set aside corporate conveyances, or to enforce some other cause of action belonging to the foreign corporation. The writer of the opinion of the court in the recent cases of *Holmes* v. *Jewett* (Colo. 1913) 134 Pac. 665, held that a stockholder's bill to set aside a conveyance which depended upon the determination of the validity of a corporate act, involved internal management of corporate affairs, and therefore should be dismissed, although the property involved was within the jurisdiction of the court.[18] If the plaintiff had based his suit on the fraud of the corporate officers he would be seeking relief in his capacity as a stockholder, just as truly as if the foundation of his grievance were the invalidity of the corporate act. Yet the court in the principal case draws a distinction between these kinds of suits; and the authorities generally support the jurisdiction of the court, at least, in the former class of cases.[19]

The result reached on the subject by the better considered cases, then, would seem to be that unless the plaintiff sues in the capacity of stockholder, he can have relief in equity granted against a foreign corporation; but if he does, the court will in its discretion refuse to

---

(1898) 151 Ind. 174; but see Stafford *v.* Amer. Mills Co. (1881) 13 R. I. 310. On this point, as on the preceding one, the New York courts will take jurisdiction even at the suit of a stockholder. Hallenborg *v.* Greene (N. Y. 1901) 66 App. Div. 590.

[14]See Importing etc. Co. *v.* Locke (1874) 50 Ala. 332; Richardson *v.* Clinton Wall Trunk Co. (1902) 181 Mass. 580; Maguire *v.* Mortgage Co. (C. C. A. 1913) 203 Fed. 858.

[15]See Waters-Pierce Co. *v.* Texas (1900) 177 U. S. 28.

[16]See Wilkins *v.* Thorne (1883) 60 Md. 253; Wason *v.* Buzzell (1902) 181 Mass. 338; Gregory *v.* N. Y. etc. R. R. (1885) 40 N. J. Eq. 38; *contra,* State *ex rel* Ryan *v.* Cronan (1897) 23 Nev. 437, 448.

[17]Nettles *v.* McConnell (1907) 151 Ala. 538; Swift *v.* Richardson (Del. 1886) 7 Houst. 338; State *ex rel.* Watkins *v.* Land etc. Co. (1902) 106 La. 621; Andrew *v.* Mines Corp. (1910) 205 Mass. 121; *contra,* Kinney *v.* Mexican Plantation Co. (1911) 233 Pa. 232. The New York cases also denied this right, Matter of Rappleye (N. Y. 1899) 43 App. Div. 84, Appeal dismissed (1899) 161 N. Y. 615, until change was made by statute. People *ex rel.* Singer *v.* Knickerbocker Trust Co. (N. Y. 1902) 38 Misc. 446.

[18]*Accord,* Sprague *v.* Voting Machine Co., *supra;* Moore *v.* Silver Valley, etc. Co., *supra;* see Mumford *v.* Ecuador Dev. Co. (N. J. 1901) 50 Atl. 476.

[19]Watkins *v.* Land etc. Co. (1902) 107 La. 107; Wineburgh *v.* U. S. Steam etc. Co. (1899) 173 Mass. 60; Kidd *v.* New Hampshire Traction Co. (1903) 72 N. H. 273; Wilson *v.* Amer. Palace Car Co. (1904) 67 N. J. Eq. 262; Crumlish *v.* Shen. Valley R. R. (1886) 28 W. Va. 623, 635. If the plaintiff is a resident, the result in New York is again based on statute; Code of Civil Procedure §§ 1781, 1782, General Corporation Law §§ 90, 91.

take jurisdiction if it will be unable to enforce its decrees, or if the question involved depends peculiarly upon the law or policy of the domicile of the corporation.[20]

MUTUALITY IN THE SPECIFIC ENFORCEMENT OF CONTRACTS OF OPTION. —The obscurity which has enveloped the doctrine of mutuality in specific performance, though in large part dissipated by the researches of two learned writers,[1] is still the cause of considerable confusion of thought. The classic statement of the rule is: The contract must, as a general rule, be mutual, that is, such that it might, at the time it was entered into, have been enforced by either of the parties against the other.[2] But this imperfect generalization is subject to many exceptions. Thus, the fact that the plaintiff, an adult, was an infant at the inception of the contract,[3] or that he failed to sign the memorandum required by the Statute of Frauds,[4] or that he was unable to make a good title at the date of the contract or the filing of the suit,[5] constitutes no defense to a bill for specific performance. These exceptions are referable to the principle that the only mutuality required is that of the remedy at the time of the decree. And mutuality has been more accurately defined to mean that equity will not compel specific performance by a defendant, if after performance the common law remedy of damages would be his sole security for the performance of the plaintiff's side of the contract.[6] But the generally discarded idea that mutuality of obligation, as well as of remedy, is required, still persists in some jurisdictions, where specific performance of contracts of option for the sale of land is refused on the ground that the optionee is under no reciprocal duty to accept the option.[7]

An option contemplates either a bilateral or a unilateral contract. From an option of the first class a distinct bilateral contract arises upon the optionee's notice of acceptance;[8] if it be of the second class a tender of the purchase price gives to the optionor the complete *quid pro quo* for his promise. In the latter case the plaintiff has acquired a position identical with that of a party to a bilateral contract who has fully performed; hence, in either event, no effective defense can be interposed to the bill. A more difficult question arises where the optionor has endeavored to revoke the option during its life. If the option is but a contract to hold open an offer, its breach

---

[20]See Babcock *v.* Farwell (1910) 245 Ill. 14.

[1]J. B. Ames in 3 COLUMBIA LAW REVIEW, 1; W. D. Lewis in 49 Amer. Law Reg. 270, 319, 383, 447, 507, 559 and 50 Amer. Law Reg. 65, 251, 329, 523.

[2]Fry, Specific Performance (5th ed.) 231; see also 4 Pomeroy, Eq. Juris. (3rd ed.) § 1405.

[3]Clayton *v.* Ashdown (1714) 9 Vin. Abr. 393.

[4]Hatton *v.* Gray (1684) 2 Ch. Cas. 164; Armstrong *v.* Maryland Coal Co. (1910) 67 W. Va. 589, 598.

[5]Gibson *v.* Brown (1905) 214 Ill. 330.

[6]3 COLUMBIA LAW REVIEW, 2.

[7]Jenkins *v.* Locke (1894) 3 App. Cas. (D. C.) 485; Rider *v.* Gray (1856) 10 Md. 282.

[8]Reese Co. *v.* House (1912) 162 Cal. 740.